

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)**

**ARIZONA LONG-TERM CARE SYSTEM**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R9-28-506                          | New Section                     |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: ARS §§ 36-2932, 36-2939
- Implementing statute: ARS § 36-2939
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Docket Opening: 13 A.A.R. Code Editor to fill in, June 22, 2007
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |                                  |
|------------|----------------------------------|
| Name:      | Mariaelena Ugarte                |
| Address:   | AHCCCS                           |
|            | Office of Legal Assistance       |
|            | 701 E. Jefferson, Mail Drop 6200 |
|            | Phoenix, AZ 85034                |
| Telephone: | (602) 417-4693                   |
| Fax:       | (602) 253-9115                   |
| E-mail:    | AHCCCSRules@azahcccs.gov         |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
- The 1115 Waiver Amendment approved by CMS in October 2006 has authorized coverage of personal care services by a spouse of an ALTCS member in a home and community based (HCBS) setting under certain circumstances. The proposed rule is intended to describe the requirements that must be met as imposed by the Waiver for a spouse to provide this care.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
- The Administration did not rely, review or refer to any study for purposes of this rule change.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The proposed rule provides for the requirements that a spouse must meet in order to provide personal care services to an ALTCS member. The economic impact is anticipated to be minimal with consideration of the reimbursement that may be made to the spouse for the provision of personal care services.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Mariaelena Ugarte  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4693  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS website [www.azahcccs.gov](http://www.azahcccs.gov) the week of June 11, 2007. Please send written comments to the above address by 5:00 p.m., August 6, 2007. E-mail comments will also be accepted during this timeframe.

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: August 6, 2007  
Time: 10:30 a.m.  
Location: AHCCCS  
701 East Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing

Date: August 6, 2007  
Time: 10:30 a.m.  
Location: ALTCS: Arizona Long-Term Care System  
110 South Church, Suite 1360

Tucson, AZ 85701

Nature: Public Hearing

Date: August 6, 2007

Time: 10:30 a.m.

Location: ALTCS: Arizona Long-Term Care System  
3480 East Route 66  
Flagstaff, AZ 86004

Nature: Public Hearing

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

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**ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS**

Section

R9-28-506. ~~Reserved~~ Spouse as Paid Caregiver Requirements

## TITLE 9. HEALTH SERVICES

### CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

#### ARIZONA LONG-TERM CARE SYSTEM

#### ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

##### **R9-28-506. ~~Reserved~~ Spouse as Paid Caregiver Requirements**

**A. For purposes of this section the following definitions apply:**

“Extraordinary care” means care that exceeds the range of activities that a spouse would ordinarily perform in the household on behalf of the ALTCS member if the member did not have a disability or chronic illness, and which are necessary to assure the health and welfare of the member and avoid institutionalization.

“Personal care or similar services” means assistance with the Activities of Daily Living (ADLs), or Instrumental Activities of Daily Living (IADLs), whether furnished in the home or the community, including personal assistance, attendant care, and closely related services such as home health aide, homemaker, chore, and companion services which may include improving and maintaining mobility and physical functioning, promoting health and personal safety, preparation with meals and snacks, accessing and using transportation, and participating in community experiences and activities.

**B. As authorized by the 1115 Waiver, a member may choose to have personal care or similar services provided by the member’s spouse as a paid caregiver subject to the following conditions and limitations:**

- 1. The member must reside in his/her own home.**
- 2. The Administration or a Program Contractor must offer the member the choice of a provider of personal care or similar services other than the member’s spouse.**
- 3. The personal care or similar services must be described in the member’s plan of care prepared by the member’s case manager.**
- 4. The case manager must at least annually record in the member’s plan of care the member’s choice to have personal care or similar services provided by the member’s spouse as a paid caregiver.**

5. The personal care or similar services provided by the spouse must be extraordinary services.
6. The spouse must be:
  - a. Employed by a provider that subcontracts with the member's Program Contractor, or
  - b. If the member is developmentally disabled or a Native American enrolled in FFS, the spouse must be either employed by a provider that subcontracts with the member's Program Contractor or registered with AHCCCS as an independent provider.
7. The spouse must meet the training and other provider qualifications that apply to other personal care providers registered with AHCCCS.
8. Neither the Administration nor a Program Contractor will pay a spouse providing personal care or similar services at a rate that exceeds the rate that would be paid to a provider of personal care or similar services who is not a spouse or that exceeds the capped fee for service payment for personal care or similar services.
9. A spouse providing personal care or similar services as a paid caregiver shall not be paid for more than 40 hours of services in a seven day period.
10. For a member who elects to have their spouse provide personal care or similar services as a paid caregiver, personal care or similar services in excess of the services provided by the spouse as paid caregiver are not covered.
11. By electing to have the member's spouse provide personal care and similar services as a paid caregiver, the member is not precluded from receiving medically necessary, cost effective home and community based services other than personal care or similar services.